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FILED

MAR 28 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GRADILLAS COURT REPORTERS, INC.,

Plaintiff,

vs.

CHERRY BEKAERT, LLP AND SARA CRABTREE,

Defendants.

CASE NO. 2:17-cv-00597-RBS-DEM

PLAINTIFF GRADILLAS COURT REPORTERS, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY BEHMKE REPORTING AND VIDEO SERVICES

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PLAINTIFF GRADILLAS COURT REPORTERS, INC.'S NOTICE OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY BEHMKE REPORTING AND VIDEO SERVICES

Pursuant to Federal Rule of Civil Procedure section 45(d)(2)(B)(i), Plaintiff Gradillas Court Reporters, Inc. ("Gradillas") respectfully moves this Court for an Order compelling Behmke Reporting and Video Services ("Behmke") to produce the documents called for by the Subpoena to Produce Documents served on Behmke at its Burbank office on February 2, 2018 and again at its San Francisco office on February 21, 2018 (the "Subpoena").

This Motion is made on the grounds that (1) the documents sought by the Subpoena are highly relevant to the claims of Gradillas in the instant case, as they contain information which Plaintiff's financial expert has requested and cannot be obtained elsewhere, and (2) Behmke's response to the Subpoena, in which it objected to and refused to produce documents sought by the Subpoena on the grounds of alleged lack of relevance and protection of trade secret information does not justify withholding the information under a protective order. The Motion is based on this notice, the attached memorandum of points and authorities in support, any reply memorandum filed, the declarations of Suzelle M. Smith, Alice Gilbert, and Andrea Wilson filed concurrently herewith, the record and files in this action, and upon any oral argument that the Court may order.

Dated: March 28, 2018

Respectfully submitted,

GRADILLAS COURT REPORTERS, INC.

By Counsel,

By: Suzelle M. Smith

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF GRADILLAS COURT REPORTERS, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY BEHMKE REPORTING AND VIDEO SERVICES

I. INTRODUCTION

Plaintiff Gradillas Court Reporters, Inc. ("Gradillas" or "Plaintiff") is a woman and minority-owned international court reporting service. Ms. Josephine Gradillas is the sole owner of the company. Gradillas performs court reporting work, including for various government agencies, such as the Securities and Exchange Commission ("SEC"). Defendants Cherry Bekaert, LLP ("Cherry") and Sara Crabtree ("Crabtree," collectively "Defendants") have served as Gradillas' professional government contracts experts and consultants since 2013, and have acted as Gradillas' Contract Manager on government contracts since 2015. Ms. Crabtree, a senior manager at Cherry, was the primary person working on Gradillas' matters. Cherry has been very successful in preparing and submitting professional and timely bids to government agencies on behalf of Gradillas, including to the SEC.

In February of 2017, Plaintiff retained Defendants to prepare and submit a bid for a March 2017 SEC Contract solicitation for the provision of court reporting services worldwide ("Worldwide Contract"). Ms. Gradillas informed Cherry of the deadline for submission of bids which was three weeks away on March 17, 2017 at 12:00 PM EST. The SEC specified that the bid would only be awarded to a woman-owned small business contractor. This of course narrowed the competition significantly. SEC contracts are not automatically awarded to the lowest bidder, but are best services contracts where price and a number of other factors, including experience, are taken into account.

Cherry submitted Gradillas' bid after the deadline and it was automatically rejected on that basis. Ms. Crabtree emailed the SEC and asked it to accept the late bid, stating that the tardiness was 100% her fault. The SEC responded that, under the controlling regulations, it could not accept the late bid. On January 18, 2018, the bid was awarded to Behmke Reporting and Video Services ("Behmke").

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In the next several months, Behmke was given two purchase orders under the bid, one for $7,000,000 and one for $850,000. There have been two protests of the award to Behmke, both by Free State Reporting, Inc. The first has been dismissed by the SEC General Accountability Office ("GAO"), and the second is pending. The Behmke purchase orders have been cancelled pending the resolution of the second protest. The contract with Behmke has not been cancelled pending the protest.

In the meantime, the SEC has hired Gradillas on other contracts, smaller than the March 2017 Worldwide Contract.

After Cherry failed to prepare and submit the bid on time and refused to compensate Gradillas for the loss of the contract, Gradillas filed suit against Defendants. The case is pending in the U.S. District Court for the Eastern District of Virginia. The trial date is July 17, 2018 and discovery cutoff is May 8, 2018. The operative complaint alleges causes of action for breach of contract and professional malpractice and Defendants have answered.

Defendants take the position now that Gradillas cannot prove that it would have been awarded the SEC contract, even if Defendants had properly prepared and submitted the bid on time. Plaintiff's expert, a government contract specialist, Ms. Andrea Wilson of BDO USA, LLP (curriculum vitae attached as Ex. A to the Declaration of Suzelle M. Smith ("Smith Decl.") filed concurrently herewith) has asked Plaintiff to obtain the Behmke bid documents and related information about the award of the bid and the protest in order to help her evaluate and form her expert opinion about the reasonable likelihood that Gradillas would have been awarded the bid, the standard the federal court is applying in this case. *Preferred Sys. Sols., Inc. v. GP Consulting, LLC*, 284 Va. 382, 398-99 (2012). Millions of dollars in damages are at stake.

Plaintiff has asked the SEC, pursuant to the Freedom of Information Act ("FOIA"), to provide the requested documents. The SEC has refused to do this, citing the regulation prohibiting it from disclosing confidential business information obtained in the bidding process. Smith Decl. Ex. B. After receiving the response to its FOIA request, Plaintiff issued and served the Subpoena for the production of documents on Behmke.

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Ms. Paula Behmke spoke with Ms. Alice Gilbert, a paralegal at Howarth & Smith, trial counsel for Gradillas, and agreed to accept the Subpoena and produce the documents with the responsive date of March 1, 2018 in mind. Declaration of Alice Gilbert ("Gilbert Decl.") ¶ 8. Shortly thereafter, counsel for Behmke wrote local Virginia counsel for Gradillas and stated that the documents would not be produced and that Behmke would object. There were a series of phone calls and emails between counsel about the Subpoena, counsel for Gradillas reviewed a case citation supplied by counsel for Behmke and sent case authority in return, and counsel for Gradillas offered to (1) have the production in San Francisco for the convenience of Behmke and (2) execute an "attorneys' and experts' eyes only" protective order, so that any confidential business information of Behmke would not be seen by Gradillas.

Ultimately, counsel for Behmke rejected these offers, served objections, and confirmed that Behmke would not produce absent a court order. As discussed more fully below, Behmke is required under the federal rules and case law to comply with the Subpoena, so long as there is a proper protective order executed.

This Court has jurisdiction to enforce the Subpoena, as San Francisco is the agreed-upon place of compliance by counsel under the Subpoena. Fed. R. Civ. P. 45(d)(2)(B)(i).

II. GRADILLAS' SUBPOENA

On February 2, 2018, Gradillas served a Subpoena to Produce Documents (the "Subpoena") relating to Behmke's bid and award of the March 2017 Worldwide Contract, as well as documents tending to show its comparative eligibility for the Contract as compared to Gradillas. *See* Smith Decl. Exs. C and D (Subpoena to Produce Documents to Behmke and Proof of Service, both dated February 2, 2018).

The full text of the document production topics is available in the subpoena, attached hereto as Exhibit C to the Smith Declaration, but in summary form, the Subpoena called for the production of the following documents:

1. Behmke's bid for the SEC Worldwide contract;

2. Communication between the SEC and Behmke concerning its bid;

3. Behmke's Contract Award documents;

4. Documents showing payments from the SEC for services under the Behmke Contract Award;

5. Documents demonstrating Behmke's status as a woman-owned business;

6. Documents for any and all awards that Behmke has competed for or been awarded by the SEC since 2012; and

7. Documents sufficient to show government contracts bids that Behmke has competed for since 2012.

The Subpoena was served on Behmke at its Burbank office, where Behmke regularly transacts business per Federal Rule of Civil Procedure 45(c)(2). The Subpoena was accepted by a Behmke employee who refused to give his name. Smith Decl. Ex. D; Gilbert Decl. ¶ 4. Production was called for at Howarth & Smith's office, located at 523 W. 6th Street, Suite 728, Los Angeles, CA 90014, by February 20, 2018.

As a courtesy to Behmke, and to attempt to avoid any unnecessary disputes and court intervention relating to service, on February 12, 2018, Gradillas attempted service on Behmke at its San Francisco office at the address listed with the Secretary of State, which is 160 Spear Street, Suite 300, San Francisco, CA 94105. Apart from the production and signature dates, this subpoena was identical to the Subpoena served on Behmke's Burbank office. Gilbert Decl. ¶ 9.[1] Production was again called for at Howarth & Smith's office in Los Angeles, this time by March 1, 2018.

On February 15, 2018 Ms. Alice Gilbert, an employee with Gradillas' counsel, spoke by phone with Paula Behmke. Ms. Behmke is the President and Founder of Behmke. Ms. Behmke stated that she would accept the Subpoena on February 21, 2018. Gilbert Decl. ¶ 8. Ms. Gilbert advised Ms. Behmke of the March 1, 2018 deadline for production and Ms. Behmke said that she would collect the responsive documents. *Id.* Ms. Gilbert confirmed this appointment via email with Behmke's office on February 15, 2018, which reattached a copy of the subpoena. Gilbert Decl. Ex. A. Per Behmke's agreement, on February 21, 2018, the Subpoena was again served on Behmke at its San Francisco office. Smith Decl. Exs. E and F.

[1] The initial subpoena was properly noticed on all parties and their attorneys of record. Smith Decl. Ex. C.

III. RESPONSE TO THE SUBPOENA AND MEET AND CONFER

On February 23, 2018, Gradillas' Virginia counsel, Robert Tata, received an email from Behmke's counsel, Richard Seabolt, objecting to the subpoena on various grounds, including objections to the place of compliance being Los Angeles (even though this was well within 100 miles of Behmke's Burbank office) and to producing confidential trade secret or commercial proprietary information. Smith Decl. Ex. G. In responding to Mr. Seabolt's objections, Mr. Tata offered to have Behmke deliver the requested documents to his office in San Francisco, or in PDF format via email. *Id.*

On February 28, 2018, Gradillas' California counsel, Suzelle M. Smith, called Mr. Seabolt to discuss the Subpoena. Smith Decl. ¶ 4. Ms. Smith told Mr. Seabolt that she and her client understood that the documents might contain sensitive commercial information and that the information could be guarded via protective order, either the one already entered by the federal court or another one. *Id.* Mr. Seabolt gave Ms. Smith a case citation, which she reviewed. *Id.* ¶ 5. Howarth & Smith also did further research on the issue of a third-party subpoena in a case involving lost profits damages. *Id.* ¶ 6. On March 7, 2018, Ms. Smith received a letter from Mr. Seabolt containing "more formal objections [to] supplement the objections set out in [Mr. Seabolt's] emails to Mr. Tata on February 23, 2018." Smith Decl. Ex. H. Specifically, Behmke objected to the place of compliance, to the relevance of the Behmke bid documents to Gradillas' claim, and again on trade secret grounds. *Id.*

On March 8, 2018, Ms. Smith sent Mr. Seabolt a letter addressing each of Behmke's objections, including: renewing Mr. Tata's offer to have Behmke comply in San Francisco or via email, offering to stipulate to an "attorneys' and experts' eyes only" protective order, and offering to pay the reasonable costs of production. Smith Decl. Ex. I. In her letter, Ms. Smith distinguished the case provided by Mr. Seabolt on the grounds that it is irrelevant to our situation, and cited relevant and controlling case law. *Id.*

On March 12, 2018, Ms. Smith received a response letter from Mr. Seabolt rejecting Gradillas' compromise offers, renewing Behmke's objections, and declining to produce the documents sought by Gradillas' subpoena. Smith Decl. Ex. J ("Behmke Reporting objects and

declines to produce documents sought by the Gradillas' [sic] subpoena.").

Having made a good faith effort between counsel to resolve the discovery dispute, and after notifying Behmke via email to Mr. Seabolt on March 14, 2018 of Gradillas' intent to move to compel production, Plaintiff now brings this Motion to Compel Production of the requested documents by Behmke, pursuant to Federal Rule of Civil Procedure 45(d)(2)(B)(i). *See* Smith Decl. Ex. K.

IV. ARGUMENT

A. The Requested Documents Are Highly Relevant to Gradillas' Claims and There Is No Alternate Source

There is no legitimate dispute that the documents sought by the Subpoena are relevant to Gradillas' claims here. Plaintiff must prove causation and damages on its lost profits claim by a preponderance of the evidence, by showing that it is reasonably likely that the Gradillas bid would have been accepted over the Behmke bid if Defendants had properly prepared and submitted the bid. *Preferred Sys. Sols.*, 284 Va. at 398-99. To sustain its burden, Plaintiff has retained an expert, Ms. Andrea Wilson, who is an experienced government contract consultant and has experience in the award of federal government contracts. Defendants have retained a similar expert. Plaintiff's expert has asked Plaintiff to obtain the Behmke bid documents and related material in order to compare the factors the SEC uses to make the award to the Gradillas and Behmke bids. The expert has said that such a comparison is by far the best way to form an opinion on the likelihood that Gradillas would have received the bid if timely. Declaration of Andrea Wilson ("Wilson Decl.") ¶ 5. Each of the categories of documents called for by the Subpoena, set forth in summary form above and in the attached Exhibit C to the Smith Declaration, directly bear on this key question. Ms. Paula Behmke apparently initially understood the reasonableness of the request under the circumstances and agreed to produce the documents. Gilbert Decl. ¶ 8.

Under the federal rules, the test for relevance is whether the Behmke documents have "any tendency to make [the facts proving causation or lost profit damages] more or less probable than [they] would have been without the evidence." Fed. R. Evid. 401; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 587 (1993).

Behmke's response to the Subpoena implicitly concedes that the document requests meet this standard; it states that "[t]o recover lost profits, as opposed to bid preparation costs, Gradillas would need to provide expert testimony that satisfied both *Daubert* gatekeeping requirements . . . and contract law 'reasonable certainty' requirements . . ." and that Behmke's documents are relevant "to provide a foundation" for that expert testimony. Smith Decl. Ex. H at 3. However, Behmke takes the position that, if it asserts that Gradillas is unlikely to prevail in its case, it can refuse to produce the evidence.

Behmke's "relevance" objection recites that, in its view, Plaintiff has "evidentiary and substantive hurdles . . . in its lawsuit," that any expert testimony on the issue of lost profits is "ultimately inadmissible" and that, due to a bid protest, Behmke does not yet have an "operative contract" with the SEC, as grounds for refusing to produce the evidence. Smith Decl. Ex. H at 3. None of these opinions on the case are a ground for refusing to comply with a subpoena seeking the evidence and data here. *See Gonzales v. Google, Inc.*, 234 F.R.D. 674 (N.D. Cal. 2006).

Neither a third party's opinion of admissibility nor any pre-assessment of the merits of a case are proper grounds for refusing to comply with a subpoena. "Relevance is construed more broadly for discovery purposes than for trial, and information is discoverable even if it might not itself be admissible." *Ashman v. Solectron Corp.*, No. C08-01430 HRL, 2009 WL 1684725, at *4 (N.D. Cal. June 12, 2009) (citing Fed. R. Civ. Pro. 26(b)(1)); *Scott v. Clarke*, No. 3:12-CV-00036, 2013 WL 6158458, at *5 (W.D. Va. Nov. 25, 2013). It is well-settled that discovery motions are not an appropriate forum to prejudge a case. *Sou v. Bash*, No. 2:15-CV-698-APG-VCF, 2015 WL 7069297, at *2 (D. Nev. Nov. 10, 2015) (citing *Ministerio Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013)); *Equal Employment Opportunity Commission v. Fisher Sand and Gravel Co.*, No. CV 09-0309 MV/WPL, 2009 WL 10696549, at *2 (D.N.M. Dec. 14, 2009) ("It would be improper to prejudge now, during the discovery phase, whether the EEOC will be able to prevail on its claim for punitive damages at trial or whether instead Fisher will prevail on its defense. The EEOC is not required to establish a prima facie case on punitive damages before being entitled to discovery on the issue.") (citing *EEOC v. Envtl. & Demolition Servs.*, 246 F.R.D. 247, 249 (D. Md. 2007); *EEOC v. AutoZone Inc.*, 631 F. Supp. 2d 1076, 1079

(C.D. Ill. 2009)); *Hartford Accident & Indem. Co. v. Superior Court*, 37 Cal. App. 4th 1174, 1182 n.3 (1995). Thus, at the discovery stage, Gradillas need not show that it has a "reasonable certainty" of proving lost profit damages, merely that Behmke's documents are relevant to an issue in the case.

Therefore, Behmke's "relevance" objections to Gradillas' Subpoena are improper and should be overruled.

B. Behmke Cannot Refuse to Produce Based on Its Claim of Trade Secret Immunity

1. There Is No Absolute Privilege For Trade Secrets

Behmke next objects and refuses to comply with the Subpoena on the grounds that "the documents requested contain Behmke Reporting trade secrets and commercial proprietary information that if disclosed, especially to a competitor like Gradillas, would cause substantial competitive harm to Behmke Reporting." Smith Decl. Ex. H at 4. However, federal law does not provide blanket protection for relevant evidence as to which there is a claim of trade secret protection for a non-party to the underlying case.

The case of *Gonzales v. Google, Inc.*, 234 F.R.D. 674 (N.D. Cal. 2006) is on point here. In *Gonzales*, the ACLU and other plaintiffs sued the United States government, challenging the constitutionality of the Child Online Protection Act. *Id.* at 678. The Government subpoenaed a nonparty, Google, to provide search index information and user search queries, and moved to compel compliance. *Id.* at 679. The Court held that confidential trade secret information is subject to disclosure pursuant to a subpoena if the party issuing the subpoena can demonstrate that the requested discovery is relevant and important to judicial determination of the case, and if that disclosure is subject to a protective order and payment of reasonable costs. *Id.* at 685-88.

Of note, the Court specifically stated that "there is no absolute privilege for trade secrets and similar confidential information." *Id.* at *685* (quoting *Centurion Indus., Inc. v. Warren Steurer and Assoc.*, 665 F.2d 323, 325 (10th Cir. 1981) (citing *Federal Open Market Committee v. Merrill*, 443 U.S. 340, 362 (1979))); *see also Pasadena Oil & Gas Wyoming LLC v. Montana Oil Properties Inc.*, 320 F. App'x 675, 677 (9th Cir. 2009) ("Under federal law, there is no absolute privilege for

trade secrets; instead, courts weigh the claim to privacy against the need for disclosure in each case, and district courts can enter protective orders allowing discovery but limiting the use of the discovered documents."); *Omega S.A. v. Costco Wholesale Corp.*, No. CV 04-5443-TJH RCX, 2005 WL 6411417, at *2 (C.D. Cal. June 8, 2005) (applying the balance-shifting test for trade secret subpoena and compelling disclosure, subject to protective order, because plaintiff showed its need for the information to prove the elements of its claim).

Behmke argues that *Gonzales* "does not support [Gradillas'] position" because the Court did not grant the full discovery sought and because the requested information was not a full trade secret but characterized by the Court as only "somewhat commercially sensitive." Smith Decl. Ex. J at 4. Further, Behmke attempts to distinguish by noting that "Google's competitors, AOL, Yahoo, and Microsoft produced the same type of data pursuant to the Government's request without objection." *Id.*

Behmke's attempts to distinguish Gonzales fail. First, in making its "substantial need" analysis, the Gonzales Court expressly applied trade secret analysis, not any "somewhat commercially sensitive" information analysis, as Behmke suggests. *Gonzales*, 234 F.R.D. at 685-86 ("The determination of substantial need is particularly important in the context of enforcing a subpoena when discovery of trade secret or confidential commercial information is sought from non-parties."). *Gonzales* was explicit that it was applying the test for the trade secret objection that Behmke asserts in response to the Subpoena; it is therefore directly applicable to the instant matter.

Further, the reason that the *Gonzales* court granted only a portion of the discovery sought by the Government was that the full discovery sought was cumulative and duplicative. *Id.* at 686. Gradillas' discovery subpoena is neither cumulative nor duplicative, and Behmke has not alleged so or objected on those grounds. Indeed, Behmke originally agreed to produce. Gilbert Decl. ¶ 8. Further, Gradillas tried to get the information from the SEC before asking Behmke, but the SEC said that it could not disclose this information, only Behmke. In short, the only way to get the relevant documents is from Behmke.

Also, whether one's competitors willingly discloses the same kind of information has no bearing on whether that information is commercially sensitive or trade secret information under the

law. *Gonzales*, 234 F.R.D. at 684-85 (laying out and applying the test for trade secret information). In *Gonzales*, the Court mentions AOL, Yahoo, and Microsoft's disclosures in the context of determining whether the Government truly has a "substantial need" for Google's information in addition to the information provided by its competitors. *Id.* at 685-86. The Court there determined that its competitors' production did not negate the "substantial need" for Google's information, not that the production made it unnecessary for Google to produce. *Id.* Here, Gradillas attempted to get the information from the SEC, but its rules require plaintiff to go to the source.

Behmke has cited *McDonnell Douglas Corp. v. NASA*, 180 F.3d 303 (D.C. Cir. 1999) for the proposition that, if a third party will suffer substantial competitive harm, that prevents disclosure. Smith Decl. Ex. H at 4. First, Behmke has failed to provide any proof that all of the documents requested under Gradillas' subpoena are protected trade secrets which would cause Behmke "substantial competitive harm" if disclosed. And here, the disclosure will not be to the competitor, but to counsel and experts only. From this limited disclosure, no competitive harm can come.

Furthermore, *McDonnell*, a case obviously not controlling authority, dealt with the disclosure of confidential information pursuant to a FOIA request. 180 F.3d at 304. In *McDonnell*, a government contractor sued the government, claiming that the National Aeronautics and Space Administration's (NASA's) decision to release pricing information relating to its contract in response to a FOIA request was improper, and that the pricing information should be protected under the Trade Secrets Act and FOIA Exemption 4. *Id.* at 304-05.

Here, the disclosure is in response to a subpoena in a civil action, not pursuant to FOIA, and the subpoena does not implicate any FOIA Exemptions or the Trade Secrets Act, 18 U.S.C. § 1905, which provides for sanctions where officers or employees of the United States disclose trade secrets which come to them in the course of their employment. The Trade Secrets Act does not apply to Gradillas' subpoena to Behmke and the D.C. Circuit's findings based on the statute are completely inapplicable to the instant case.

The law is therefore clear here that there is no blanket prohibition on the discovery of information as to which there is a trade secret claim. Rather, as the *Gonzales* court held, where the party issuing the subpoena can demonstrate that the requested discovery is relevant and important to

judicial determination of the case, and that disclosure may be subject to a protective order and payment of reasonable costs, a trade secret objection will not prevent discovery.

2. Gradillas Has Shown A Substantial Need for Behmke's Documents

As set forth above, there can be no legitimate dispute as to the relevance of the requested documents to Gradillas' case. Behmke has not objected to Gradillas' substantial need for the documents requested by Gradillas' subpoena. In fact, as previously noted, Behmke has conceded that these documents are relevant to Gradillas' lost profits expert testimony, which is an important part of its case in chief. *See* supra (IV)(A); Smith Decl. Ex. H at 3. Furthermore, there is no alternative way to get this particular information. As "substantial need" is not disputed here, and cumulative or duplicative discovery is not alleged, Gradillas' subpoena is enforceable under the *Gonzales* test. *See Gonzales*, 234 F.R.D. 674.

3. Gradillas Has Offered to Stipulate to a Protective Order and Pay Costs

Even if Behmke could show a legitimate need for trade secret protection here, such a concern is also addressed by use of an appropriate protective order. The Ninth Circuit has found that protective orders may strike a reasonable balance between the interests of one party in prosecuting its case and another in protecting proprietary information. *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470-71 (9th Cir. 1992). District Courts within the Fourth Circuit hold similarly. *Innovative Therapies, Inc. v. Meents*, 302 F.R.D. 364, 381 (D. Md. 2014); *Gyro-Trac Corp. v. Vermeer Mfg. Co.*, No. 2:11-CV-02533-RMG, 2012 WL 13002179, at *1 (D.S.C. Aug. 21, 2012).

Gradillas has offered during its meet and confer efforts to stipulate to an "attorneys' and experts' eyes only" protective order for any trade secret or commercial proprietary information produced by Behmke in this matter, in order to prevent any such information from reaching any of Behmke's competitors, including the Plaintiff in this case. A proposed draft protective order, the same as was mailed to Mr. Seabolt on March 8, 2018, is attached to the Smith Declaration as Exhibit L.

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Gradillas is also prepared to pay the reasonable cost of copying and delivering the documents to Mr. Tata's office in San Francisco or the reasonable cost of scanning and sending the documents in PDF format via email to Mr. Tata and Ms. Smith, which would be minimal.

Thus, Gradillas clearly meets the requirements for production as set forth in the *Gonzales* case and its motion should be granted.

V. BEHMKE'S PLACE OF COMPLIANCE OBJECTION IS MOOT

Per Federal Rule of Civil Procedure 45(c)(2), a document subpoena may command production "at a place within 100 miles of where the person . . . regularly transacts business in person." Behmke keeps an office in Burbank that Behmke's counsel has represented is for the purpose of taking depositions, which Behmke is in the business of doing because it is a court reporter. As set forth above, this location is staffed; there was an employee available at the office to receive service of Gradillas' first subpoena. It is also under 20 miles from Howarth & Smith in Los Angeles, which makes the place of production in the original Subpoena well within the 100-mile radius of Behmke's office required by Rule 45.

Nevertheless, any objection by Behmke on the basis of the place of production has been mooted, as Gradillas agrees to accept production at the Hunton & Williams San Francisco office, located at 50 California Street, Suite 1700, San Francisco, CA 94111, or via email to Ms. Smith and Mr. Tata. This is within the required range as measured from Behmke's San Francisco office.

Therefore, any objection to the Subpoena based on the place of production fails, and is moot in any event. Thus, Gradillas' motion to compel should be granted.

VI. CONCLUSION

For the foregoing reasons, Gradillas respectfully requests this Court to grant its Motion and enter an Order compelling Behmke to produce the documents responsive to each of the requests contained in Gradillas' subpoena.

Dated: March 28, 2018

Respectfully submitted,

GRADILLAS COURT REPORTERS, INC.

By Counsel,

By: Suzelle M. Smith

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Counsel for Plaintiff Gradillas Court Reporters, Inc.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 W. Sixth Street, Suite 728, Los Angeles, California 90014.

On March 28, 2018, I served the foregoing document described as:

PLAINTIFF GRADILLAS COURT REPORTERS, INC.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY BEHMKE REPORTING AND VIDEO SERVICES

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Richard L. Seabolt, Esq.
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Counsel for Cherry Bekaert, LLP and Sara Crabtree

[X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California.

[X] (BY E-MAIL) I caused such document to be transmitted electronically to the e-mail address(es) of the person(s) set forth above.

[X] (FEDERAL) I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 28, 2018, at Los Angeles, California.

Alice Gilbert